

MAGIC VALLEY TRAIL MACHINE ASSOCIATION, INC.

IBLA 80-398

Decided August 31, 1981

Appeal from decision of the District Manager, Shoshone District Office, Bureau of Land Management, Idaho, designating 470 acres of public land as "Closed Areas and Trails" permanently prohibiting the use of off-road vehicles. ID-ORV-05-1.

Affirmed.

1. Administrative Procedure: Administrative Review -- Federal Land Policy and Management Act of 1976: Land Use Planning -- Public Lands: Administration

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decision-maker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

APPEARANCES: L. E. Drexler and Ed Carr for appellant; Robert S. Burr, Esq., Office of the Solicitor, Boise, Idaho, for the Government.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The Magic Valley Trail Machine Association, Inc., has appealed from a decision of the District Manager, Shoshone District Office, Bureau of Land Management (BLM) designating 470 acres of public land located in the Devil's Corral and Vineyard Lake area in the Snake River area of Jerome County, Idaho, as "Closed Areas and Trails where the use of off-road vehicles [ORV] is permanently prohibited." BLM's decision was published on October 9, 1979, in the Federal Register,

44 FR 58002. A right of appeal to this Board was provided in BLM's published decision.

By order of April 8, 1980, the Board at the request of counsel for BLM placed the decision appealed from into effect during the pendency of the appeal, pursuant to 43 CFR 4.21(a).

BLM took the action to close the Devil's Corral and Vineyard Lake area to ORV pursuant to the regulations in 43 CFR 8340. These regulations were promulgated to carry out the requirements of Exec. Order No. 11644 (37 FR 2877 (Feb. 9, 1972)), as amended by Exec. Order No. 11989 (42 FR 26959 (May 25, 1977)). Regulation 43 CFR 8342.1 requires BLM to take the following steps for all public lands:

§ 8342.1 Designation criteria.

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

In this instance BLM issued a notice on August 30, 1979, which included the inventory and evaluation, proposed designation, and implementation plan for the Snake River area containing approximately 4,950 acres of contiguous public land. The notice proposed 4,480 acres to be designated as open to ORV use and the remaining 470 acres (at issue in this appeal) were designated as closed to ORV use. With respect to the 470 acres, BLM stated that extensive soil disturbance, soil loss, and disturbances to cultural resources has occurred within the Devil's Corral area which appears to have been caused by recreational ORV use. Accordingly, BLM proposed to designate the area as closed to ORV use, and indicated that a barrier would be built across

the one entrance road to Devil's Corral. A public hearing to discuss the designation was scheduled for September 11, 1979, and written comments were invited through September 15.

The record shows that appellant and other ORV groups participated in an information gathering process and attended the public hearing. They continually opposed the proposed closed designation for the 470 acres. Appellant concludes in its appeal:

It is our contention that the closure is not justified under the authority quoted. This is due to the lack of research on the part of the B.L.M., including only a reference to an inventory based on low-level aerial photos taken in June of 1979. No copy of, or direct reference to, the mentioned Archeological report was or has been produced which would indicate cultural value or suggest ORV damage to such value if it does in fact exist at this current date. The public hearing overwhelmingly expressed opposition to the proposed closure. An additional factor justifying the appeal is the physical fact that a portion of the 470 acres needs no regulatory closure as it consists of an "island" surrounded by sheer canyon walls several hundred feet high which very effectively eliminates all possibility of ORV access except by air-drop from a helicopter [sic].

Statement of Reasons at 2.

An environmental assessment record (EAR) for the proposed designation was completed on September 28, 1979. The EAR (No. ID-05-9-99) indicates that damage to cultural and soil resources in Devil's Corral was occurring, and it appeared that much of it could be attributed to ORV use. No written comments were received, but BLM did reference the negative views expressed at the public hearing in the EAR, which were taken into account in making the final decision. A review of the EAR indicates that BLM did consider the alternative ORV designations but determined that a closed designation was appropriate for these 470 acres because information in the record showed that ORV use had been detrimental to the soil, vegetation, wildlife, and in particular cultural resources, specifically archaeological sites.

Appellant's allegation that BLM has not researched this matter is not well founded. The record contains adequate documentation to support BLM's determination that this area has sustained damage by ORV use and needs further protection. On appeal BLM has submitted affidavits by an associate professor of anthropology, an archaeologist, a soil scientist, a range conservationist, a wildlife biologist, and a recreational planner, all of which stress the need for closure of this area. 1/ Appellant's arguments to the contrary are not persuasive that BLM has erred in the closure action.

1/ These affidavits were submitted with BLM's motion to put the district manager's designation into full force and effect as of Feb. 25, 1980.

[1] In our most recent consideration of a similar ORV designation in John Schandelmeier, 56 IBLA 284 (1981), we discussed at length an appellant's burden in this type of a case to show clear and convincing error below. Citing California Association of Four-Wheel Drive Clubs, 38 IBLA 361, 367 (1978), we pointed out at 287:

Where conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the result. Cf. Questa Petroleum Co., 33 IBLA 116 (1977); Rosita Trujillo, [20 IBLA 54 (1975)].

Appellant does not meet this burden by merely advancing another point of view. While an appellant may take issue with subjective determinations by BLM, such opposition does not necessarily demonstrate error.

In Schandelmeier, *supra*, the Board quoted a passage from Rosita Trujillo, 21 IBLA 289, 291 (1975), for a proposition useful here:

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Since the record at hand shows that BLM has reasonably considered alternatives and justified their choice of action in this matter, we find no compelling reason to alter that determination.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

